Appendix II

Vide **Answer to Question No 276.**

Statement, by caste, of the Officers in the Anchal Department drawing a monthly salary of Rs. 40 and above.

(A) HINDUS.		
(1) Brahmins	...	23
(2) Nairs	...	9
(3) Other caste Hindus	...	6
(4) Kammalas	...	Nil.
(5) Nadars	...	Nil.
(6) Ezhavas	...	4
(7) Cheramar	...	Nil.
(8) Other Hindus	...	3
(B) MUSLIMS	...	Nil.
(C) CHRISTIANS.		
(1) Jacobite	...	6
(2) Marthomite	...	6
(3) Syrian Catholic	...	1
(4) Latin Catholic	...	1
(5) South Indian United Church	...	1
(6) Other Christians	...	Nil.
Total	...	60

NOTICE OF ADJOURNMENT MOTION.

PRESIDENT: There is an adjournment motion given notice of by Mr. Varughese. It reads thus:—

"I beg leave to move for the adjournment of the business of this House to discuss a definite matter of urgent public importance, *viz*, the attitude of the Government of India towards the prayer of cocoanut planters of South India for a protective import duty against foreign import of cocoanut as evidenced by the statement of the Honourable Sir Mahomed Zaffarullah Khan, the Commerce member to the Government of India made on the floor of the Indian Legislative Assembly on 3-2-1936 that after careful consideration the Government of India have come to the conclusion that an enhancement in the rates of duty on cocoanuts and cocoanut products is not justified."

There are two matters to be considered in connection with this motion. One is whether this matter deals with any question for which the Government of Travancore is responsible. The obvious anwer is no. Its discussion will also trench very delicately on the relations between the Government of India and the Indian States, a matter which is prohibited for discussion on the floor of this House. For these two reasons, I think I must disallow the motion.

Legislative Business.

THE TRAVANCORE COMPENSATION FOR IMPROVEMENTS BILL.—(*contd.*)

PRESIDENT: The next item is legislation. We will now take up the Travancore Compensation for Improvements Bill and take it up at the point at which it was left at the last session of the House.

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MR. N. E. VARUGHESE (*Tiruvalla I*): With reference to the ruling made the other day, I request the permission of the Chair to allow me to speak in English because I feel more competent to deal with the subject, being a legislative measure, in English than in Malayalam.

PRESIDENT: Alright. Thank you. Speak in English.

Clause 3.

MR. N. E. VARUGHESE (*Tiruvalla I*): My amendment is to omit the explanation to Clause 3.

The explanation to Clause 3 reads thus:—

"Trees of any class not assessed to revenue in any locality at the last Land Revenue Settlement shall, until the contrary is proved, be deemed to be trees of spontaneous growth in that locality."

Sir, I made a complaint, when the very same subject came up for discussion before this House on a previous occasion, that the Bill, as revised by the Select Committee, had no sufficient publication because there were only very few days between the last session and the date of publication. Anyhow, I moved certain amendments with the permission of the Chair. But unfortunately my first amendment was disallowed by the House. With your permission, Sir, I may make one observation which I am compelled to make. In the revised Bill which is before the House, I see that an attempt is made to curtail the extent of the compensation as much as possible. The landlord is benefited, but the landholder is adversely affected at every step. In Clause 3 it is mentioned that no compensation shall be payable on account of trees of spontaneous growth. There the axe is laid on the holder. The axe is again sought to be laid on the holder of the land by means of the Explanation to Clause 3 which is too general. It may be possible for the holder to prove that such and such trees are not trees of spontaneous growth or for the proprietor to prove that those trees are of spontaneous growth and compensation may or may not be paid. I submit for the serious consideration of this House, what should be the policy of the Government, much more, the policy of the legislature. It should be to encourage the development of lands by intensive cultivation and by all other means. The Government is indirectly benefited by all sorts of development of lands. So, neither the legislature nor the Government should stand in the way of advancement of agriculture. All possible opportunities and inducement should therefore be given to the holder to develop the land. By this I do not mean that the land should be improved so that it may not be possible for an ordinary proprietor to recover his land. That is not my idea. The general principle ought to be that no provisions of law should stand in the way to deter people in the development of agricultural lands. Even without the Explanation the Clause materially affects the development of agriculture. By the addition of the explanation matters are made worse. It seems that the Select Committee had in its mind that no trees other than those assessed in the last Settlement should be valued and compensation paid for. Sir, in the northern taluks, the only trees that were assessed in the last Settlement are, jack trees, cocoanut trees

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and arecanut trees and no other trees. In the southern taluks, the mango and tamarind trees are also assessed. But these trees are not assessed in the northern taluks. When that memorable and most celebrated Settlement Proclamation was issued, the policy of the then Government was to tax the land very leniently. As few trees as possible were sought to be taxed and as light a tax as possible was sought to be imposed upon the lands. That was the idea of the then Government. Sir, any one having some idea of agriculture and knowing the conditions in Travancore will concede that there are different varieties of trees in every holding, other than the trees assessed in the last Settlement, yielding good annual income, such as the cashewnut trees, mango trees, palmyrah trees, and other different kinds of trees.

All these trees have to be planted and reared with some labour and cost. Are we to presume that these trees are of spontaneous growth? No, I submit that all these trees should be presumed as having been planted and reared by the holder unless the contrary is proved. The House must consider very seriously the evil effects of this explanation upon the holders. It is very hard and unjust to throw the burden of proof on the holders.

MR. MENATHERI. N. KESAVA PANICKAR (*Nominated*): On whom does the burdern lie at present?

MR. N. E. VARUGHESE (*Tiruvalla I*): At present the burden of proof lies on the proprietor. In this connection, I shall refer to a decision of our High Court published at page 609, Volume XVIII, of the Travancore Law Journal:

> "Though this court observed incidentally in Kanakku Krishnan Raman *v.* Kanakku Thevan Easwaran that mango, laurel and tamarind trees were trees of wild growth in North Travancore, it was observed in Govinda Jatha Vetha Nampooripad *v.* Nanga Bhagavathi and others that tamarind, pungu, konna and oth r trees cannot be treated as wild trees of spontaneous growth as they were actually planted and reared in some places. Again in Krishna Narayanan *v.* Mathevan Narayanan, punna and kodappana were stated to be ordinarily grown with care and have to be compensated for to the mortgagee in the absence of any provision to the contrary in the mortgage deed. Both the courts have therefore rightly allowed compensation to the mortgagee for these trees as the appellant has not chosen to adduce any evidence to substantiate that these trees are of spontaneous growth."

The case was heard and judgment pronounced by their Honours A. Venkitarama Aiyar and K. Parameswaran Pillai. The decision was against the appellant in the case who was represented by our worthy friend Mr. P. K. Narayana Pillai.

MR. R. RAMAN PILLAI (*Changanachery cum Peermade II*): May I know the court whose decision was appealed against?

MR. N. E. VARUGHESE (*Tiruvalla I*): The Vaikom District Munsiff's Court.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): May I know the kind of trees?

MR. N. E. VARUGHESE (*Tiruvalla I*): I have already mentioned them, laurel, portia and tamarind. These trees have not been assessed in the last Settlement and there is the final decision of the

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highest court that the burden lies upon the proprietor and not on the holder.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know from the member whether there are not rulings of the Travancore High Court reported in *Kolappa Pillai*, quite contrary to this ruling?

MR. N. E. VARUGHESE (*Tiruvalla I*) Sir, all those rulings have been referred to in this case. This was decided on the 4th Thulam 1103.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know whether all those rulings contained in *Kolappa Pillai* have been referred to here?

MR. N. E. VARUGHESE (*Tiruvalla I*): Yes, they have been referred to. This is the latest dec ision of our Honourable High Court. It is not right to upset this decision without sufficient and convincing reasons.

Then I ask whether there will be any difficulty to any party if the explanation to the clause is deleted as proposed by me. Will it in any way injure the proprietor? I do not think so. It is open to the proprietor to prove that such and such trees are of spontaneous growth.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is it not open to the holder to prove that a particular tree is not of spontaneous growth?

MR. N. E. VARUGHESE (*Tiruvalla I*): Is it fair and reasonable to drag the holder to the necessity of proving it? When a particular tree is productive and yields annual income like the trees assessed to revenue, the burden ought to be naturally on the proprietor and not on the holder as is sought to be inflicted by the explanation.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Who is to get the value of the improvements - is it the holder or the proprietor?

MR. N. E. VARUGHESE (*Tiruvalla I*): Am I to answer such a question when the answer is self-evident? The member wants to extract an answer from me for such a simple question.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): Is not the holder in a better position to prove that he has planted and reared it?

MR. N. E. VARUGHESE (*Tiruvalla I*): To a certain extent, I admit it. But, in this connection, proof means positive and legal proof. Suppose I have a tamarind or a mango tree on my holding. It may be that my servant has planted it. When you put the question whether I have planted it, I may have to answer that I did not plant it but my servant or ancestor did it. And the servant or the ancestor who planted it might be dead. In that case, I am unable to establish that I myself planted the particular tree, the servant or the ancestor is dead and I am unable to adduce positive evidence to the fact of planting. The Judge may find that I have not satisfactorily discharged my burden of proof and thereby disallow my claim.

MR. R. SIVARAMAN NAIR (*Tiruvalla II*): May I know whether the burden should not apply to the proprietor also?

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MR. N. E. VARUGHESE (*Tiruvalla I*): We know what is meant by spontaneous growth. That is growth not by the efforts of human beings.

The ruling of the High Court is quite in consonance with the general rule of jurisprudence.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is the member of opinion that, if it is proved that a tree was really of spontaneous growth, the holder need not be given compensation?

MR. N. E. VARUGHESE (*Tiruvalla I*): That depends upon the way in which the tree grew there. Many circumstances have to be taken into consideration. I request the House to consider this aspect of the matter and come to a reasonable decision. The Select Committee that sat over the Bill might not have considered this aspect of the matter seriously. Therefore—

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): As the Chairman of the Select Committee, I would ask your indulgence for a moment. The member said that the Select Committee did not seriously consider the matter. It is more or less a reflection on the members of the Select Committee. It is only a difference of view and it is reasonable. I do not think it is quite open to the member to cast aspersions. I raise this point on behalf of the Select Committee.

PRESIDENT: I am sure Mr. N. E. Varughese might not have meant like that. At the time the Select Committee was considering the Bill, this aspect of the matter was not brought to their notice. Now Mr. Varughese has placed additional matter before the House, and he wants the members to consider this aspect of the matter.

MR. N. E. VARUGHESE (*Tiruvalla I*): I am the last man to cast a reflection on the members of the Select Committee.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I second the amendment. Any measure passed on the floor of the House should care for the interests of all classes of people. The main principle underlying any legislation is that it should be conducive to the progress and welfare of the State. From that point of view there are several things to be borne in mind. Let us first of all see the position of the agriculturists in the State. The agriculturists of the State are persons who do not own lands. They are not true and permanent possessers of lands in their own way. Those who are in possession of the lands are so, with respect to their lands, a set of aristocrats, a sort of idle people, if I may be permitted to call them so. That is to say, they have no interest in agriculture except the fact that they reap the benefit of other people's labour. What does an agriculturist get in return for the labour and time spent by him on another's land? After all, he gets only a small compensation at the time of eviction. That is the only asset that stands to the credit of the real agriculturists. In fact, the majority of the agriculturists in the State are like that.

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I think the House will admit that the majority of the agriculturists are without lands. In North Travancore every agriculturist is under the grip of one Jenmi or other. A major portion of the lands are owned by the Jenmies who are directly connected with the agriculturists but not with agriculture.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know from the member whether Jenmies at present can be regarded as the proprietors of lands?

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I am quite aware of that. Sir, the member is thinking of the Jenmi Kudiyan Regulation. It does not in any way solve this question. I am thankful to the member in reminding me of this fact. Even now the major portion of the lands in North Travancore belongs to the Jenmies. They are let out to the agriculturists on simple lease deed or *panayam* deed as the case may be. These agriculturists are open to eviction at any moment. *Kanam* lands are only very few; so also *pandarapattom* lands. With regard to the major portion of the paddy lands, which are let out on simple deeds or *panayam* deeds, the agriculturists are open to eviction at any moment. For the time, money and labour invested in them the agriculturists are often given some small compensation for the value of the improvements effected on the lands. The question is under what circumstances, and under what law can the *kudiyans* claim compensation. It is for that this Bill is now placed before the House. If the members are convinced of this fact, and I hope the members will seriously consider the matter, what will be the result of passing this Bill without paying any consideration to the amendment of Mr. Varughese? The amendment of Mr. Varughese is to omit the Explanation to Clause (3).

Mr. Varughese told the House that very few trees were assessed during the last Settlement which took place some 30 years back. Only trees such as cocoanut, arecanut and jack were assessed then. Are the conditions of 30 years back the same as now? Trees of that period which were considered to be valueless then have now become valuable ones. Cashewnut and rubber trees are instances in point.

MR. A. THANU PILLAI (*Trivandrum-Rural*): May I know whether the cashewnut tree is of spontaneous growth or not?

MR. K. M. KURIAKOSE (*Muvattupuzha II*): To me, Sir, the expression 'spontaneous growth' is a very vague expression. Literally it means, trees sprung up without any effort on the part of the cultivator. Cashewnut may spring up in some corner of the compound. At the same time in the expression "spontaneous growth" there is the idea of rearing and manuring. It is for that we have to pay much attention. Rearing is the most important factor. At present in any holding it is impossible to find any tree standing without rearing and manuring on the part of the holder. There might have been a time when trees grew up spontaneously. The very fact of the tree standing in the holding shows that it has been manured. Its very existence can be traced to the good will and care of the occupier. He could have at least cut it down for fuel purpose.

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As I have stated the majority of the cultivators are far less capable of collecting evidence and proving their points before a court of law than the land-owners. It is therefore the duty of the Legislature to do its best for the cultivator and to shift the burden of proof on the land-owner. The point that we have to consider in regard to the present amendment is, who is in a better position to let in evidence; is it the Jenmi or the tenant ? Certainly, it is the Jenmi, the aristocrat, and not the poor cultivator.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Has not the member accepted the position that the holder of land is not entitled to compensation for trees of spontaneous growth ?

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : To me, it appears the expression 'trees of spontaneous growth' is a myth. No tree grows spontaneously.

M. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : My question is, has not the member already accepted the position that the tenant is not entitled to any value for trees of spontaneous growth.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : I know we have made that provision. We have done that mischief. Why should we confirm it and accelerate its effect ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Does not this amendment re-open a question which has once been settled ?

PRESIDENT : His point is that the present amendment is all the more necessary since the other position has been accepted.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : Yes, Sir.

If the provision in the Bill is retained as it is, doubts will arise as to the party on whom the burden of proof lies to show whether a tree was reared by the cultivator or was of spontaneous growth. As I told you—

PRESIDENT : Why not you use parliamentary language ? Say 'the House', and not 'you'. You are not here addressing any particular individual.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : When I say 'you', I mean the House.

As I told you in the beginning—(*Laughter.*)

PRESIDENT : You cannot avoid it ?

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : I am sorry, Sir.

If the provision in the Bill is retained as it is, no cultivator will have any tendency to cultivate and improve the lands in the country. This provision will retard their zest, and they may all turn away from land. The Settlement Officer might have omitted a tree in some cases or might have added a tree in some other cases. For such acts of the Settlement Officer, who is it that is now going to suffer ? It is the cultivator and not the owner of the land.

With these words, I support the amendment.

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MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I oppose the amendment. The only point that has to be considered in connection with this amendment is, who is to prove that a particular tree is of spontaneous growth. It has already been decided by the House that, for trees of spontaneous growth, no compensation need be paid to the cultivator. It is only just and fair therefore that the man who claims compensation should prove that he has planted and reared the tree for which he claims compensation. He alone can go and swear before a court of law that he has planted the tree and reared it. The owner of the land cannot certainly go and swear before a court of law that a particular tree was not planted or reared by the cultivator. The burden of proof should therefore be entirely on the tenant and not on the owner of the land. For this reason, I oppose the amendment.

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): I also oppose the amendment. The explanation now sought to be amended does not seek to take away the right of the cultivator for compensation for his trees. It only says that he must prove that the trees for which he wants compensation were planted and reared by him and were not of spontaneous growth. Sir, Mr. Varughese referred to Section 114 of the Evidence Act. I do not think that Section is applicable here. The principle laid down by the Evidence Act is a well-known principle, namely, that it is for the party who knows the details and circumstances connected with a particular fact to prove that fact. Certainly, if the cultivator has been doing the cultivation methodically, he would have accounts with which he can easily prove his case. On the contrary, the absentee landlord, who, in most cases, lives miles and miles away from the land, cannot prove that any tree has not been planted or reared by the cultivator. The onus should therefore be on the party who is in a position of advantage in rendering the necessary proof.

MR. N. E. VARUGHESE (*Tiruvalla I*): If the Evidence Act is so very clear, where is the necessity for this Explanation here?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum-Urban*): My friend was a Vakil some time ago and I would therefore leave him to his own explanation of the position. A disquisition on the law of evidence will be too much for this House. I would not have referred to the Evidence Act at all but for my friend's reference to it.

Sir, the cultivator is entitled to sympathy. But there are cultivators in name and cultivators in fact. The particular decision referred to by my friend does not cover our present position. In regard to the case reported in 18 T. L. J. 606, the land was situated in the Vaikam taluk, a sandy tract, unlike lands in Minachil, Todupuzha and Muvattupuzha, where manure has collected for years together and trees grow in abundance spontaneously. My learned friend, Mr. P. K. Narayana Pillai, put a question to Mr. Varughese whether there were not contrary decisions of the High Court. There are many such decisions also.

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MR. K. C. ABRAHAM (*Kottayam II*): Does the law of presumption differ according to the nature of the soil?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): There is no presumption according to the nature of the soil; but when there are facts to show that some lands are barren and others fertile, then the presumption arises.

MR. K. C. ABRAHAM (*Kottayam II*): Does not the presumption depend upon the nature of the facts involved?

SADASYA TILAKAN T. K. VELU PILLAI (*Trivandrum—Urban*): Presumptions as such have no existence in this world. They are not flying about in the air. They are based on facts, and arise out of actual judicial experience.

Sir, the decision referred to by Mr. Varughese merely mentions that there are certain parts in North Travancore where trees are cultivated. Sir, North Travancore is not a one-acre plot. It covers hundreds and thousands of square miles. The observation in the judgment relating to Vaikam cannot be considered to apply to the whole of North Travancore.

Much has been said about cashewnuts. Till very recently, cashewnut was not at all in favour with the cultivator. The old proverb was that, if you want to impoverish and ruin a village, you should go and plant a cashewnut tree there. Experience has taught us that it does impoverish the soil. Somehow, recently, it seems to thrive very well. It is a scientific truth that cashewnut does impoverish the soil; and there is the experience of our fore-fathers to prove that fact. Sir, Judges' opinion cannot be considered to be sacrosant and inviolable. There is the right for the cultivator to get compensation, and there is the Evidence Act which lays down the principle that one who knows about a particular fact should take the burden of proving that fact. And, it is also in keeping with the rule of commonsense that the tenant must prove that he cultivated the trees for which he wants compensation.

The amendment was put to vote and lost.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I demand a poll.

MR. N. E. VARUGHESE (*Tiruvalla I*): I demand a poll.

PRESIDENT: It has already been demanded.

A poll was taken and the House divided as follows:—

AYES—3.

1 Mr. K. M. Kuriakose.	3 Mr. Antony George
2 ,, N. E. Varughese	

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NOES—49.

1 Mr. P. K. Narayana Pillai
2 ,, T. K. Alexander
3 ,, M. Mahomed Haneef
4 Miss Hepzibah Gnanasikamony
5 Mr. A. Thanu Pillai
6 ,, N. John Joseph
7 ,, T. T. Kesavan Sastri
8 ,, K. P. Krishna Menon
9 ,, E. K. Kunjuraman
10 ,, V. Ramakrishna Panickar
11 ,, K. Sankaran
12 Rao Sahib Dr. N. Kunjan Pillai
13 Mr. R. Nilakanta Pillai
14 ,, G. B.E. Truscott
15 ,, A. S. Damodaran Asan
16 ,, N. K. Krishna Pillai
17 ,, Kayalam Parameswaran Pillai
18 ,, C. Kumara Das
19 ,, R. Sivaraman Nair
20 ,, Edavanatt S. Padmanabha Menon
21 ,, G. Nilakantan
22 ,, M. K. Madhavan Pillai
23 ,, V. K. Velappan Nair
24 ,, M. Sivatanu Pillai
25 ,, N. Abdur Rahiman Sahib
26 Rao Sahib S. Parameswara Aiyar
27 Sadasya Tilakan T. K. Velu Pillai
28 Srimati T. Narayani Amma
29 Mr. K. R. Elenkath
30 ,, T. C. Joseph
31 ,, K. M. Krishnan
32 ,, T. Krishna Pillai
33 ,, P. C. Narayanan Bhattatiripad
34 ,, R. Raman Pillai
35 ,, P. K. Thomas
36 ,, T. C. Thommen
37 ,, K. George
38 ,, P. Chidambaram Pillai
39 ,, Pacode A. Narayana Pillai
40 ,, A. Easwara Pillai (*Kalkulam II*)
41 ,, C. V. Chandrasekharan
42 ,, James Simpson
43 ,, Kainikkara M. Padmanabha Pillai
44 ,, Pottayil S. Krishna Panickar
45 ,, K. A. Narayana Pillai
46 ,, M. K. Janardana Kamath
47 ,, T. P. Velayudhan Pillai
48 ,, T. S. Jayantan Nambootiri
49 ,, Menatheri N. Kesava Panickar

NEUTRALS—7.

1 Mr. K. C. Abraham
2 ,, S. Chattanatha Karayalar
3 R. Sambasiva Aiyar
4 Mr. K. Mahomed
5 ,, V. T. Chacko
6 ,, S. Thiraviam Nadar
7 ,, K. Padmanabhan

The amendment was declared lost.

The question whether Clause 3 should stand part of the Bill, was put to vote and accepted by the House.

Clause 3 was added to the Bill.

The House adjourned for lunch at 1-3 P. M. and re-assembled at 2 P. M. with the Deputy President in the Chair.

Clause 4.

DEPUTY PRESIDENT: We shall go on with Clause 4.

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MR. N. E. VARUGHESE (*Tiruvalla I*) : Sir, I move the following amendment to sub-clause (*b*) of Clause 4 :—

"Recast sub clause (*b*) of clause 4 as follows :—

"Three-fourths of the total annual yield of such trees shall be taken as the gross produce of such trees and the value of such gross produce shall be deemed to be the *pattom* of such trees."

Sir, in the revised Bill, successive methods are mentioned for ascertaining the value of improvements. First of all, the annual gross produce of the trees has to be calculated for purposes of improvements. In clause (*b*) and subsequent clauses, certain deductions are contemplated. The Clause says that first of all three-fourths of the annual yield as determined by sub-clause (*a*) shall be taken as the gross produce. After ascertaining that, clause (*b*) says that a further deduction of one-fourth of the gross produce as found above shall be made. That means the net annual yield shall be taken as three-fourths of three-fourths of the total gross produce. Suppose the annual letting value of the property is Rs. 64. According to the method of calculation suggested in the revised Bill, first of all Rs. 16 has to be deducted and then another deduction of Rs. 12 has to be made. The deduction of the first one-fourth is intended for purposes of maintenance or as it is called in Malayalam "കരപ്രമാണം കിഴിവു". I can understand this deduction and everybody who has anything to do with agriculture can understand this deduction. Some expenses have to be incurred by the holder for purchase of manure, for giving support to the trees and cocoanut bunches and such other items and it is for this purpose that a deduction of 1/4 is made. But the Bill provides for a further deduction of 1/4 in calculating the net produce. Why this second deduction is made I am unable to understand. The Select Committee has not explained the reasons which weighed with it for making this further deduction and I fail to understand in spite of my earnest desire although I made enquiries as to why this second deduction is made. In calculating the net produce, the practice hitherto followed in all courts of the State is to make a deduction of 25 per cent. of the gross produce. Considering the enormous interests involved in the principle of this Bill, it is not a trifling matter to the holder. The holder should be entitled to a portion of the gross produce to meet the general expenses of the maintenance of the property and for that one-fourth may be set apart. I am therefore of opinion that it is unnecessary and unfair in the interests of the holder to deduct another 1/4 share. It is with this object that I have proposed the present amendment and I request the House to accept it. What I have suggested is only reasonable and no elaborate arguments are necessary to convince the House to accept my amendments. With these words, I move that my amendment to clause 4 be accepted.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : I second it.

MR. R. RAMAN PILLAI (*Changanacherry* cum *Peermade II*) : I oppose the amendment.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Sir, I would not have risen but for the observation of Mr. Varughese that the practice in ascertaining the net produce has been different from the provisions of this Bill. With great respect to Mr. Varughese, I may say he is wrong in that respect. The basis of calculating improvements is what is known as the letting value. In arriving at the letting value, as Mr. Varughese observed, the expenses of upkeep will have to be deducted. That is, one-fourth of the actual yield will have to be kept aside and what remains would be three-fourths as the real gross produce of the property.

The next question is whether the letting value of the property can be taken to be three-fourths of the gross yield deducting the upkeep charges. It is very difficult to keep the letting value of the property at the maximum amount of the yield available from the property without a margin of profits.

Under the Full Bench Ruling of the High Court in 10 T.L.R., Page 7, the courts are bound to take into consideration only three-fourths of what remains after deducting the expenses for the general upkeep of the property. Mr. Varughese is not correct when he says that the general practice in courts has been otherwise. The matter has been considered by the High Court in 10 T. L. R., 7 and has been followed in many cases including the one reported in 21 T.L.R., Page 52. If any court has been indulging in any other practice, that court is wrong. So nothing novel has been provided in the present instance and what has been provided is what is prevailing in many courts.

DEPUTY PRESIDENT: So, according to you, the Section confirms the existing practice?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Yes, the existing practice is confirmed by the Bill.

The amendment was put to vote and declared lost.

MR. N. E. VARUGHESE (*Tiruvalla I*): I have got another amendment, *i. e.*, that in Clause 4, sub-clause (*c*), for the words "eight and one-third" substitute "sixteen and two-third" wherever they occur.

Sir, this amendment may appear to this House to be a very novel and revolutionary attempt on my part to upset the existing practice. I concede the fact that the practice hitherto obtaining in several parts of the country was to fix the value of the trees at eight and one-third year's purchase. What I submit is that, though that practice was followed hitherto, it was not based on any sound and just principle. Somehow or other that practice found a place and it was followed. The reason that induced the Judges or those responsible for that practice is that they thought that the annual value which the holder is expected to get as compensation should be an amount which when invested at 12 per cent. would fetch an amount equal to the annual gross income from the holding. What I submit is, that the expectation which induced the Judges or those who were responsible for that practice is now entirely out of order. At present people cannot expect 12 per

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[Mr. N. E. Varughese.]

cent. interest on their investments. Those investments stipulating 12 per cent. interest are not safe. One who expects to get a safe return should deposit his money in better securities.

DEPUTY PRESIDENT: I must say, not that I want to interrupt Mr. Varughese, that you take so much time that by the time you come to the end of the sentence the first portion is forgotten. I feel some difficulty because you are having such long pauses, that when you come to the end of the sentence I am unable to remember what went before. I know that every man has got his own way of speaking. But so many pauses cause very great difficulty. It may be because you are speaking in English.

MR. N. E. VARUGHESE (*Tiruvalla I*): Each man has got his own way of speaking.

DEPUTY PRESIDENT: I am not unaware of that. But I cannot wait unconscionably long between one word and another.

MR. N. E. VARUGHESE (*Tiruvalla I*): In these days people can expect only very low rate of interest, say three or at the most 3½ per cent. on good securities. So the valuation should be based upon the reasonable expectations that would be made by the holder in these days. I take it that 6 per cent. is the most reasonable rate of interest that is paid now-a-days. If that interest is to be taken as a reasonable rate and the current rate, it is necessary that the capitalised valuation should be increased.

MR. K. R. ELENKATH (*Kalkulam I*): May I know whether this legislation should be a temporary one or a permanent measure?

MR. N. E. VARUGHESE (*Tiruvalla I*): I want it to be a permanent one.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Will not the trees last only for a limited number of years? Will they not die after a specified number of years?

MR. N. E. VARUGHESE (*Tiruvalla I*): Yes.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In that case when the trees die out, will the holder return the compensation money to the proprietor?

MR. N. E. VARUGHESE (*Tiruvalla I*): That is a contingency. Though it is a contingency I will meet the Law Member's argument. Towards the latter portion of the clause, it is mentioned :—

> "The value of such trees as improvements shall be the *pattom* capitalized at eight and one-third years' purchase provided that in the case of trees that may not continue to yield for eight and one-third years from the date of determining the value the value shall be the total *pattom* for one-half of the number of years that the trees continue to yield".

So, naturally I think the valuation ought to be according to the number of years that the trees are expected to yield. What I would ask is whether the cocoanut trees would not continue to yield for more than 34 years. Is any argument necessary to convince this House

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that cocoannt trees and jack trees will continue to yield for more than 34 years? If the Select Committee has adopted the principle that the value shall be the total *pattom* for one-half of the number of years that the trees continue to yield, am I not just and correct in demanding that the capitalised valuation should be increased to more years than what is given in this Bills? My amendment does not go beyond the principle which the Committee has accepted.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*): Which Com-m.ttee does the member refer to?

MR. N. E. VARUGHESE (*Tiruvalla I*): I refer to the Select Committee. We are now dealing with the report of the Select Committee. That Committee has accepted this principle. As cocoanut, jack and arecanut trees generally continue to yield for more than 34 years, the principle involved in my amendment to increase the number of years from eight and one-third to sixteen and two-third years is only reasonable and in conformity with that of the Select Committee.

With these words, I place the amendment for the acceptance of the House.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I second it. This provision deals with the manner of assessment. I find that the provision in the Bill is not in conformity with the present practice in civil courts; and such practice in civil courts has not been objected to so far on any occasion. The present manner of assessment I can only understand as 'a mathematical ingenuity', since it involves a formula which the ordinary man in the street cannot understand. This is the formula. Three-fourths of the annual yield is multiplied by eight-and-one-third; and three-fourths of such product is taken as the capitalised value of the tree or trees.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know what exactly, according to the member, is the existing practice?

MR. K. M. KURIAKOSE (*Muvattupuzha II*): The figure "eight-and-one-third" represents half of the yielding period of the tree.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): My humble question was as to what, according to the member, is the existing practice.

DEPUTY PRESIDENT: Mr. Kuriakose, if you can answer that question, please do it.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): The member knows it better.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): What is the existing practice according to the member?

DEPUTY PRESIDENT: When Mr. Kuriakose has not been able to answer the question put by Mr. P. K. Narayana Pillai, how does Mr. Padmanabha Menon expect him to answer the very same question?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): What is the rule laid down in 10 T. L. R.?

DEPUTY PRESIDENT: Mr. Kuriakose, I want to give you a warning; unless you know 10 T. L. R., do not answer the question.

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MR. K. M. KURIAKOSE (*Muvattupuzha II*): I am not going to answer it, Sir.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Who said that "eight and one-third" represents half of the yielding period?

DEPUTY PRESIDENT: Mr. Kuriakose said that.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): That is *my* impression.

MR. A. THANU PILLAI (*Trivandrum—Rural*): May I tell him that he is wrong?

DEPUTY PRESIDENT: You are not in order, Mr. Thanu Pillai; all that you can do is to put him a question when he is in possession.

MR. A. THANU PILLAI (*Trivandrum—Rural*): I apologise, Sir.

DEPUTY PRESIDENT: Very good.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): Before we finally dispose of this question, I wish we get the advice of the High Court on this matter.

DEPUTY PRESIDENT: It is not the practice of this House to ask for the advice of the High Court.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I know it, Sir; but my suggestion is that, if possible, the advice of the High Court should be obtained before we *finally decide* the question. My own impression is that all these provisions are calculated to prevent the cultivator from getting his poor share of labour.

DEPUTY PRESIDENT: You mean, Mr. Kuriakose, that the *effect* of these provisions will be to prevent the cultivator, and not that the provisions are *calculated* to prevent the cultivator——

MR. K. M. KURIAKOSE (*Muvattupuzha II*): Yes, Sir; but that will be the final result.

Sir, this is a time when our Government have recognised the helplessness of the agriculturists every one of whom is groaning under the burden of debt. This legislation to me appears as another threat to the already miserable tenant. It will create disaffection among the actual tillers. All the Governments of the world are tackling seriously the problem of agrarian uplift. It is then that we legislators introduce a measure which is highly detrimental to the interest of the cultivator and as such of the State as a whole. Let us be cautious. With these words, I support the amendment of Mr. Varughese to insert "sixteen and two-third" instead of "eight and one-third".

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I oppose the amendment. The Honourable High Court have held in a Full Bench Ruling that trees, unlike the land on which they grow, are not everlasting and that their annual rental value multiplied by eight and three-fourths would be sufficient to meet the expenses incurred by the landholder in planting and growing the trees. That principle has been reiterated in 20 T. L. R. also. These two rulings have been followed in the provision in the Bill. I therefore oppose the amendment.

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MR. K. P. KRISHNA MENON (*Parur*) : I also oppose the amendment. Ordinarily, in our country, a cocoanut garden will not cost more than Rs. 400 or 500 per acre ; but the proposed provision in the Bill will enable the holder to get 700 or 800 rupees. Therefore, even the provision as it is in the Bill, is more advantageous to the holder than to the landowner. I therefore oppose the amendment.

The amendment was put to vote and declared lost.

MR. K. SANKARAN (*Kartikapalli I*) : I move the following amendment :

In the first line in Clause 4, sub-clause (*d*), omit the words beginning with 'local' and ending with 'or'.

As the Clause now stands, three-fourths of the value of improvements goes to the holder and one-fourth to the proprietor. To this general rule, the provision allows two exceptions. One is, when there is a contract to the contrary. I have no complaint with respect to that. The other is when there is a local custom to the contrary. My submission is that, in a legislation of this kind, legal recognition should not be given to local custom. The chief object of legislation is to make the law uniform to all people and places alike. There is no reason why any exception should be made in favour of the people of any particular locality.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : May I ask whether, as it is, the law does not take into account the force of local custom ?

MR. K. SANKARAN (*Kartikapalli I*) : My present point is that we must put a stop to the practice of giving legal recognition to local custom. The law must be uniform to all people alike.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Why should contracts alone be upheld ?

MR. K. SANKARAN (*Kartikapalli I*) : They were entered into by the parties with open eyes.

MR. A. THANU PILLAI (*Trivandrum-Rural*) : Does the member want the provision as amended by him to apply to lands which have been already leased or mortgaged according to custom, or only to leases or mortgages to be entered into hereafter ?

MR K. SANKARAN (*Kartikapalli I*) : I would extend the provision to leases already in force.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) ; Were not those transactions entered into in the light of local custom ?

MR. K. SANKARAN (*Kartikapalli I*) : There would have been no necessity for a specific contract if there had been a uniform and recognised custom.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : When a property is mortgaged, should we not presume that such mortgage was made in the light of custom ?

MR. A. THANU PILLAI (*Trivandrum—Rural*) : In effect, does not custom form part of the contract in such cases ?

MR. K. SANKARAN (*Kartikapalli I*) : I do not think so.

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DEPUTY PRESIDENT: Two members have put questions to Mr. Sankaran. I shall explain the point. At the time parties enter into a contract, there are certain customs in the contemplation of both the parties. The Law Member puts the question 'Is it not in the light of such customs that the contractual obligation has been created'?

MR. K. SANKARAN (*Kartikapalli I*): There is no difficulty at all in cases where a contractual obligation has been created. Difficulty arises only where there is no such obligation created by a particular document, and where the parties have to depend upon evidence as to local custom.

As the Law Member was suggesting, the parties must have had, at the time of entering into the transaction, knowledge of the particular customs prevailing in the locality, namely, three-fourths to the Jenmi and one-fourth to the tenant. What I say is that, when we are legislating for the whole of Travancore, the law should be as general as possible. We cannot look to the convenience and the interests of particular persons in particular localities. In one place the Jenmi's share may be three-fourths, while in another place it may be half. But in the vast majority of cases, it is one-fourth. Two exceptions are sought to be created by this Section. I agree to the latter, namely that any agreement that may have been entered into by the parties may be respected. But I do not think that any special mention should be made in the statute about any local custom. With these words, I move the following amendment:

"*In the first line in sub-clause (d) to Clause 4 of the Bill, omit the words beginning with "local" and ending with "or".*

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Suppose a document says "മുറപോലെയുള്ള ഭേഷണ്ണവില തന്നെ കൊള്ളാം". What should apply in that case?

MR. K. SANKARAN (*Kartikapalli I*): I think the law on that particular matter should be made applicable.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*: Will it not be going against a contract that was entered into?

MR. K SANKARAN (*Kartikapalli I*): I do not think so.

MR. K. R. ELENKATH (*Kalkulam I*): Sir, I second the amendment. The main argument advanced is that the landholder or the proprietor of a piece of land in one part of the State should not be at a disadvantage as compared with a land-holder in other parts of the State in the eye of the law. I am of opinion that, when we legislate for the State, we should take into consideration the interests of the land-holders in general and not attach importance to the land-holders holding land in any particular area. There was a question raised here whether local customs which are not included in the documents or presumed in some of them, should be observed or not. This can be easily answered. Sir, if this word "local custom" is taken away, what will happen is that the land-holder or the proprietor can have, if he so chooses, the particular

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custom made part of the contract itself and then it has all force only it stands there by contract and not by presumption. In this way contractual obligations will be definitely and clearly written down without disregarding the customs of a particular place.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Sir, I oppose the amendment. We are proceeding to legislate in this Bill honouring guaranteed expectations according to custom and practice. Let us not disturb judicial decisions based on custom observed for a number of years. We want to follow the course of least resistance. In prior clauses of this Bill, we found it necessary to step in because of conflicting decisions casting cloud on important issues. This award of value of improvements on the basis of three-fourths and one-fourth has been followed by our judicial courts for a number of years. In Shertala, Vaikam and other taluks of North Travancore, similar customs have come into vogue for generations. In Shertala, for instance, garden lands are demised on *kanom* or simple lease with the only condition "ഭൂമിയുടെ സരിപ്പുള്ള തോന്നുമ്പോലെ ചെയ്യാം". In 6 T. L. J 13 T. L. J., and 16 T. L. J. the pros and cons of the question have been discussed threadbare by our judicial authorities and they say that on the whole it is based on an equitable customary practice which works to the advantage of the holder. In most of the cases, we find that the property is demised on a very nominal rent for a period of 12 years. Even after the expiry of the term, for a number of years, trees planted by the holder and which are bearing are not assessed to *pattom*. Substantially the whole income of the trees planted by them is taken and enjoyed by the tenant as his own. The Jenmi or owner is satisfied with a very nominal rent. Ultimately at the time of redemption, it is only right, equitable and fair that the holder having enjoyed the lion's share of the profit should walk out receiving only "*nadakoor*" on one-fourth as value of improvement.

MR. K. C. ABRAHAM (*Kottayam II*): May I know whether it is allowed in the case of short-term leases?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): The tenant is allowed under the agreement to have the maximum benefit of the trees that have been planted. The trees are not assessed to *pattom* even after they begin to yield. This practice does not obtain generally in those demises which have a period less than 12 years.

MR. K. C. ABRAHAM (*Kottayam II*): Am I to understand that there are only 24 years' leases in those parts? Are there no short-term leases?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Generally they are for 12 years. But ordinarily for another 12 years also the tenant enjoys the property without the incidence of a fresh renewal.

I will explain my point by a concrete instance. Suppose I have got ten acres. I demise it on maximum lease to a tenant. But that *pattom* relates only to those trees belonging to me and which exist on

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[Mr, Edavanatt S. Padmanabha Menon.]

the property at the time of demise. I also allowed him to plant and to cultivate more trees. According to custom, he is allowed to hold the land for 12 years or more. If he plants new trees, after 5 or 6 years they begin to yield, and for the remaining period of the lease the tenant is allowed to enjoy them. If, after 16 or 18 years, I evict him, it is only fair that he must go away on nominal compensation as he has taken the yield of the trees he has planted from almost the best period of their yielding stage without paying me anything. This is the equitable principle that is working in these localities. As legalised and guaranteed expectations, these things ought not to be set aside.

MR. K. R. ELENKATH (*Kalkulam I*): May I ask whether it is impossible to have the compensation specified in the contract?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): I am sorry I have not understood the question. All local customs ought to be respected. We are here at the question of custom and not contract.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Will the member accept the principle that, in regard to holdings in the future this local custom may be disregarded?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): I think it is equitable because the parties will then enter into contracts with their eyes open.

MR. K. M. KRISHNAN (*Ambalapuzha II*): സർ, ഞാൻ ഈ ഭേദഗതിയെ പിൻതാങ്ങുന്നു. 'നടപ്പിനം' മറ്റും യാതൊരു പറഞ്ഞയക്കേണ്ട കാലംവളരെ ആയിരിക്കുന്നു. വളരെ പഴക്കം ചെന്നനടപ്പിന് സ്ഥാനമില്ല. ഇങ്ങിനെയുള്ള സംഗതികളിൽ നടപ്പിനെ നോക്കി തീരുമാനം ചെയ്യുന്നതു് നിശ്ചയമായും കടയാനവന് ഗുണപ്രദമായിരിക്കയില്ല. കരാറു ഇരുകൂട്ടരും സമ്മതിച്ചിട്ടുള്ള ഒന്നാണ്. കരാറുള്ളപ്പോൾ അതനുസരിച്ചു ഭോഗണ്ഡവിലതിട്ടപ്പെടുത്താവുന്നതാണ്.

DEPUTY PRESIDENT : കുടിയാനവൻ എന്നപദം ജന്മികുടിയാൻ ബില്ലിലെ കുടിയാൻ, എന്ന പദത്തിനെപ്പോലെ തന്നെ വിഷമമുള്ളതാണോ?

MR. K. M. KRISHNAN (*Ambalapuzha II*): ഇല്ല. വസ്തുഉടമസ്ഥനും അനുഭവക്കാരനും എന്നർത്ഥമേയുള്ളു. നാട്ടനടപ്പുനോക്കുക എന്നു വരുമ്പോൾ അതു വസ്തു അനുഭവക്കാരനു ദോഷമായിട്ടുവരുമോ. നാട്ടനടപ്പെല്ലാം ഉടമസ്ഥനു ഗുണമായിട്ടാണു ഇപ്പോഴത്തെ ഇരിപ്പു്. തിരുവിതാംകൂറിൽ പല സ്ഥലത്തും പല നടപ്പുകൾ ഉണ്ടു. മി. പദ്മനാഭമേനവൻ പറഞ്ഞതുപോലെ വയ്ക്കം, ചേർത്തല, അമ്പലപ്പുഴ മുതലായ ഓരോസ്ഥലങ്ങളിലും നടപ്പു പ്രത്യേകമാണു്. ഉത്തരതിരുവിതാംകൂറിലെ നടപ്പല്ലായിരിക്കും ദക്ഷിണതിരുവിതാംകൂറിലുള്ളതു്. അതിനാൽ നിയമം കൊണ്ടുനാട്ടനടപ്പിനെ ഖണ്ഡിക്കേണ്ടതു് അത്യാ

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വശമായിതീർന്നിരിക്കുന്നു. ദേഹണ്ഡവില അനുഭവക്കാരനു ഇന്ന തോതിനു കിട്ടേണ്ടതാണെന്നു നിയമത്താൽ വ്യവസ്ഥചെയ്യേണ്ടതാണു്. എന്നാൽ കരാറുണ്ടെങ്കിൽ അതനുസരിച്ചുചെയ്യാം.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : വസ്തു എഴുതി കൊടുക്കുമ്പോൾ ദേഹണ്ഡം കൊടുക്കാമെന്നും കരാറില്ലെങ്കിൽ ദേഹണ്ഡം കൊടുക്കേണ്ടതു നടപ്പു കൊണ്ടല്ലേ?

MR. K. M. KRISHNAN (*Ambalapuzha II*) : നടപ്പു ദേഹണ്ഡക്കാർക്കു ദോഷവും ജന്മിമാർക്കു ഗുണവുമാണു. ദേഹണ്ഡം ഇന്ന തോതിൽ നിർണ്ണയിക്കേണ്ടതാണെന്നു് കരാറിൽ ഉണ്ടായിരിക്കണം. കരാറില്ലെങ്കിൽ നിയമവ്യവസ്ഥയനുസരിച്ചുകൊടുക്കണം.

MR. K. SANKARAN (*Kartikapalli I*) : The mover of the amendment has got the right of reply.

DEPUTY PRESIDENT : The member who wants to reply has to get the permission of the Chair. It is only then the right of reply is allowed.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*) : I move for closure.

The closure motion was put to the vote of the House and carried.

MR. K. SANKARAN (*Kartikapalli I*) : I request permission to speak a few words by way of reply.

DEPUTY PRESIDENT : As a special case, I shall allow Mr. Sankaran to speak.

MR. K. SANKARAN (*Kartikapalli I*) : The main objections raised by those honourable members who opposed my amendment are that there are certain customs particularly existing in Shertala, Ambalapuzha and Vaikam which have received legal sanction, as it were, and that parties have entered into contract under the belief that these customs could be respected. These are the two points advanced by the opposition. For the first point, my answer is that so many customs which had received legal sanction have been set at nought by Statutes which have become the law of the land. The Nayar Regulation, the Vellala Regulation, and the Ezhava Regulation afford examples to that.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : May I know whether the Bill as originally introduced contemplated the abrogation of any custom?

DEPUTY PRESIDENT : At the time the Bill was introduced customs were in contemplation of the House. If all customs had to be abrogated and a levelling process advocated by the member adopted, then the House could have noticed it.

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MR. K. SANKARAN (*Kartikapalli I*): All that I am saying is that the principle of the Bill was not discussed at length. In the Select Committee many drastic changes were made and the whole Bill has come out in a different form.

MR. K. C. ABRAHAM (*Kottayam II*): May I know from the member whether custom is not also one of the principles of the Bill to be taken into consideration?

MR. K. SANKARAN (*Kartikapalli I*): Yes.

MR. K. C. ABRAHAM (*Kottayam II*): May I know whether there is any sanctity in a custom which gives away one-fourth grant?

MR. K. SANKARAN (*Kartikapalli I*): No. There is no particular sanctity in it at all.

The fact that certain customs have received the force of law does not mean that the Legislature should not deviate from them. In fact, that is what a Legislature has to do ordinarily.

MR. K. C. ABRAHAM (*Kottayam II*): Can any custom which is not reasonable be legalised?

MR. K. SANKARAN (*Kartikapalli I*): It is open to the Legislature to remove any unreasonable custom and to make the law reasonable. That is one of the objects of the Legislature. The other objection is that certain parties have entered into contract under the belief that customs would be respected. Mr. Padmanabha Menon cited a specific example. My submission is that it will come under the expression "contract".

Further, I submit that there is no life in the sub-clause. To say that one-fourth should be the ordinary rate to be given to the holder or proprietor, as the case may be, according to custom or contract is not reasonable. All cases would be covered either by custom or contract and there will be no case where the general rule could be made applicable. With these few words. I press the amendment to a division.

The amendment was put to vote and declared lost.

MR. K. SANKARAN (*Kartikapalli I*): I demand a poll.

A poll was taken with the following result :—

AYES—10.

1	Mr.	K. C. Abraham	6	Mr.	V. Ramakrishna Panickar
2	,,	K. R. Elenkath	7	,,	R. Raman Pillai
3	,,	K. M. Krishnan	8	,,	K. Sankaran
4	,,	K. Mahomed	9	,,	N. E. Varughese
5	,,	K. M. Kuriakose	10	,,	G. Nilakantan

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NOES—29.

1	Mr. P. K. Narayana Pillai	18	Mr. Kayalam Parameswaran Pillai
2	,, N. Abdur Rahiman Sahib	19	,, C. V. Chandrasekharan
3	,, T. K. Alexander	20	,, R. Achuthan Pillai
4	,, S. J. Nair	21	,, C. Kumara Das
5	Miss Hepzibah Gnanasikamony	22	,, N. K. Krishna Pillai
6	Srimati T. Narayani Amma	23	,, A. Easwara Pillai (*Kalluvalam II*)
7	Mr. A. Thanu Pillai	24	,, A. Easwara Pillai (*Kottarakara*)
8	,, J. W. Tolson	25	,, R. Sivaraman Nair
9	,, S. Chattanatha Karayalar	26	,, Edavanatt S. Padmanabha Menon
10	,, T. S. Jayantan Nambootiri	27	,, Pottayil S. Krishna Panickar
11	,, T. T. Kesavan Sastri	28	,, V. K. Velappan Nair
12	,, T. Krishna Pillai	29	,, M. Sivatanu Pillai
13	,, P. K. Thomas		
14	,, K. C. Karunakaran		
15	Rao Sahib Dr. N. Kunjan Pillai		
16	Mr. T. C. Thommen		
17	,, R. Nilakanta Pillai		

NEUTRALS—10.

1	Rao Sahib S. Parameswara Aiyar	5	Mr. P. C. Narayanan Bhattatiripad
2	Mr. Menatheri N. Kesava Panicker	6	,, K. Padmanabhan
3	,, J. M. Joseph	7	,, R. Sambasiva Aiyar
4	,, K. P. Krishna Menon	8	,, M. K. Madhavan Pillai
		9	,, M. K. Janardana Kamath
		10	,, T. P. Velayudhan Pillai

DEPUTY PRESIDENT: Before I announce the result, I have to point out one fact. Mr. Raman Pillai, the mover of the Bill, has voted for the amendment. Is that allowed?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Though it is Mr. Raman Pillai's Bill, the Bill has emerged from the Select Committee with drastic changes. It is that Bill that is under the consideration of the House.

DEPUTY PRESIDENT: The result of the voting is:

Ayes—10.
Noes—29.
Neutrals—10.

Therefore the amendment is lost.

MR. N. E. VARUGHESE (*Tiruvalla I*): Sir, I beg to move the following amendment:—

Recast sub-clause (*c*) of Clause 4 as follows:—

"The yield shall be valued at the average market rate which prevailed in the locality for a period of ten years previous to the time of the assessment".

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[Mr. N. E. Varughese.]

The prices of articles vary according to the law of supply and demand. At one time the prices may go up and at other times they may fall down to a low level. So generally we find the prices of commodities are not stationary. The price varies from day to day, month to month and year to year. For instance, the price of cocoanut went to the level of 10 rupees per hundred during the post-war period. I myself have sold it for that price. Now the price has fallen down. So there is no fixity in the prices of commodities.

It has been varying from year to year. Similarly the price of rubber. It went to the level of Rs. 10 per pound and then came down to Rs. 2½ and that was continued for years, and then it began to go down still further. It came down to the level of 2 annas per pound. For some time it fetched no value at all. Now the price has come up to a certain extent. So what I submit is that the price is not likely to be stationary. The price of any commodity at a certain date cannot be taken as the basis for fixing the value of the commodity. Therefore we generally take the average price for a certain number of years. That is the commonsense view of things. That is understood by all and accepted by everybody. We have already established precedents to show that the average price should be taken as the basis. I refer to the Jenmi and Kudiyan Regulation. There Section 22 (*b*) says :—

> "The pattom on other lands shall, in like manner, not exceed one-fourth of the estimated average annual yield of the trees growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding".

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*) : Is not that provision intended for assessing the *pattom* for the next twelve years ?

MR. N. E. VARUGHESE (*Tiruvalla I*) : I do not catch the question.

That principle of ascertaining the average *pattom* of trees was established long ago by our Legislature. As it has long been established and continued even now, I do not see any reason which prompted the members of the Select Committee to deviate from that established procedure.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*) : Are there not High Court rulings to the effect that the yield shall be valued at the market rate prevailing in the locality at the time of assessment ?

MR. N. E. VARUGHESE (*Tiruvalla I*) : I can only answer that question after reading the ruling.

I have fixed ten years though the Jenmi Kudiyan Regulation has fixed 12 years for the purpose of ascertaining the average price. If the valuation at the time of assessment is adopted, it may happen that the proprietor will be a big loser, and the holder is benefited. It risks the interest of both the proprietor and the holder. My contention is perfectly in accordance with the practice and custom established in this country and I request the House to accept my amendment.

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MR. K. M. KURIAKOSE (*Muvattupuzha II*) : I second the amendment. The principle of taking average for commutation purposes has been recognised long ago in all branches of science. I will just illustrate its necessity by one concrete example and show the danger in which we will be placed by accepting the present provision. For example, take the case of rubber. There was a time when there was no value for rubber. Suppose a man had lent his property for cultivation purposes. According to the present calculation since, rubber had no value then, the man could have been evicted without paying any compensation. Suppose such a contingency arises in future. Is not the man then entitled to the improvement he has effected? These things may repeat again. In order to avoid such contingencies, it is better to calculate the average value for ten years. I think that even ten years is too small a period when we have fixed 12 years in the Jenmi Kudiyan Regulation. I would have even supported an amendment for 12 years. But since the amendment is for 10 years only, I support the amendment and appeal to the House to think seriously on the matter.

MR. R. RAMAN PILLAI (*Changanacherry* cum *Peermade II*) : I oppose the amendment.

MR. A. THANU PILLAI (*Trivandrum-Rural*) : Sir, may I move my amendment also?

DEPUTY PRESIDENT : Yes.

MR. A. THANU PILLAI (*Trivandrum-Rural*) : Sir, I beg to move that :—

"*In Clause 4, sub-clause (e), substitute the words "at the average market rate prevailing in the locality during the three years previous to the time of the assessment" for the words "at the market .....-assessment"*.

MR. N. E. VARUGHESE (*Tiruvalla I*) : Sir, I rise to a point of order. My amendment is a quite distinct one. Before that is disposed of.....

DEPUTY PRESIDENT : I have already ruled that the two amendments may be discussed together.

MR. A. THANU PILLAI (*Trivandrum-Rural*) : Strictly, the value of improvements awarded to the holder should be based on the price of the commodities after the property has passed into the possession of the proprietor ; because it is the benefit that the proprietor derives from the improvements that has to be paid for. But it is not possible to forecast it, except with reference to prices prevailing at or about the time the value is assessed. The proposal of the Select Committee is to take as the basis of calculation the price of the commodity at the time of assessment. It may be that, at the time of assessment or even during a period of a month or two previous to it, the prices may go up or go down, owing to temporary causes and the rise or fall may even be abnormal. During a short period the price may be too high or too low, and to adopt that as the basis will be inequitable to one or the other of the parties. That should be prevented. Hence I propose the average of the prices prevailing during

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[Mr. A. Thanu Pillai.]

a period of three years previous to the time of assessment. But ten years as proposed by Mr. Varughese is too long a period. I suggest three years previous to the date of assessment.

MR. K. R. ELENKATH (*Kalkulam I*): I second the amendment.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): Sir, can I speak on the new amendment?

DEPUTY PRESIDENT: Yes.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): I oppose the amendment on the ground that the period of three years is very limited. The example of rubber which I cited applies here also. Rubber had no value for more than ten or twelve years. Under such circumstances, the period should be ten years, if not more. If you take the average of ten years, I do not think there is any apprehension of the price being too high or too low. The greater the period for which the average is taken, I think it will be all the more safe. On that ground I oppose the amendment.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, I oppose both the amendments. Sir, there is a ruling that in assessing value of improvements the market rate obtaining on the date of assessment should be followed. By the word "assessment" I take it that Their Honours meant determination.

ADJOURNMENT MOTION.

DEPUTY PRESIDENT: We shall now proceed to the motion for adjournment by Mr. Pacode Narayana Pillai.

MR. S. J. NAIR (*Nedumangad*): Sir, before the mover is permitted to make his motion, I rise to a point of order. The motion is intended to discuss a definite matter of urgent public importance, *viz.*, the terrible and tragic bus accident that occurred near Kuzhithurai bridge very recently *i. e.*, on Friday the 7th Meenom 1111, involving heavy loss of life, limbs and property. Sir, for the terrible and tragic bus accident that occurred on the 7th Meenom 1111, the Vilavankod Police have registered a crime as Crime No. 47 of 1111 under Sections 304, 337 and 277, Travancore Penal Code, and have charge-sheeted the case before the Vilavankod Second Class Magistrate's Court.

Sir, Rule 21 of the Travancore Legislative Rules lays down the restrictions on the right to move for adjournment. Sub-clause (5) of that Section says—

> "The motion must not deal with a matter on which a resolution could not be moved".

This section may be read along with Rule 56 at page 43 of the Manual which lays down restrictions on the subject for discussion. Rule 56 (1) (*c*) says that "no such discussion shall be permitted in regard to any matter under adjudication by a court of law having jurisdiction in Travancore". Therefore under Rule 56 (i) (*c*), no matter under adjudication by a court of law having jurisdiction in Travancore can be permitted to be discussed here. This Rule read along with Rule 21 (5)

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